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**MAILED**

JAN 06 2011

**OFFICE OF PETITIONS**

In re Application of :  
Tong Zhang :  
Application No.: 10/820561 :  
Filing or 371(c) Date: 04/08/2004 :  
Title of Invention:  
SINGLE-MODE OPERATION AND :  
FREQUENCY CONVERSIONS FOR :  
DIODE-PUMPED SOLID-STATE LASERS :  
:

DECISION ON  
PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 15, 2010, to revive the above-identified application.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

**Background**

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 15, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

Applicant filed a reply to the Office action in the form of an Amendment on October 13, 2009; however, the reply failed to place the application in condition for allowance<sup>1</sup>. Applicant was so notified in an Advisory Action, mailed January 22, 2010.

Applicant filed a letter and an Amendment in response to the Advisory Action on February 16, 2010; however, the letter and Amendment did not include an extension of time request or fee. No complete and proper (timely) reply to the final office action having been received, the application became abandoned October 16, 2009. A Notice of Abandonment was mailed March 20, 2010.

Applicant filed a petition to revive the application under 37 CFR 1.137(b), on September 7, 2010. The petition was dismissed in a Decision mailed October 8, 2010, because the petition failed to include the required reply to the Office action. The Decision informed applicant that the Examiner had reviewed the Amendment filed February 16, 2010, and concluded that the Amendment failed to place the application in condition for allowance

#### **The present renewed petition**

Applicant files the present renewed petition and includes in the body of the petition argument and conclusion that the amendment filed February 16, 2010 would place the application in condition for allowance

#### **Applicable law, Rules and MPEP**

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

#### **The present petition and amendment**

Petitioner is initially advised that any amendment to the application must be included as a separate paper. 37 CFR 1.4(c) cautions that “[s]ince different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects. ‘ Here, petitioner has included remarks/argument as to the merits of the amendment filed February 16, 2010 in the body of the petition. A separate amendment is required<sup>2</sup>.

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<sup>1</sup> The Amendment was not entered because the Amendment raised new issues that would require further consideration and/or search, and the Amendment was not in compliance with 37 CFR 1.173.

<sup>2</sup> Please note that, as stated below, any amendment under 37 CFR 1.116 must cancel all the rejected claims or otherwise prima facie place the application in condition for allowance.

As to item (1), Petitioner is again advised that the Examiner has previously reviewed the Amendment filed February 16, 2010, and concluded that the Amendment fails to place the application in condition for allowance.

Petitioner is advised that where an application is abandoned for failure to reply to a final Office action, the MPEP provides as follows:

A reply under 37 CFR 1.113 to a final action must include a request for continued examination (RCE) under 37 CFR 1.114 or cancellation of, or appeal from the rejection of, each claim so rejected. Accordingly, in a nonprovisional application abandoned for failure to reply to a final action, the reply required for consideration of a petition to revive must be:

- (A) a Notice of Appeal and appeal fee;
- (B) an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise prima facie places the application in condition for allowance;
- (C) the filing of an RCE (accompanied by a submission that meets the reply requirements of 37 CFR 1.111 and the requisite fee) under 37 CFR 1.114 for utility or plant applications filed on or after June 8, 1995 (see paragraph (d) below); or
- (D) the filing of a continuing application under 37 CFR 1.53(b) (or a CPA under 37 CFR 1.53(d) if the application is a design application).

When a notice of appeal is the reply filed pursuant to 37 CFR 1.137(a)(1) or 1.137(b)(1), the time period under 37 CFR 41.37 for filing the appeal brief will be set by the Director of the USPTO in the decision granting the petition.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Director's decision will be based solely on the administrative record in existence. A petition will not be granted if petitioner provides fails to provide the required reply to the final Office action. Therefore, if a request for reconsideration is filed, it must include the required reply to the final Office action.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window

Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Inquiries regarding the Amendment should be directed to the Examiner. Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods  
Attorney  
Office of Petitions